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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs-Appellants,

vs.

S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

BRIEF FOR APPELLANTS.

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BRIEF FOR APPELLANTS.

OPINIONS BELOW.

The opinion of the United States District Court (R. 66-68) is reported at 146 F. Supp. 214 (1956).

The earlier opinion of the United States District Court (R. 42-49) was reported at 116 F. Supp. 354 (1953), and the prior judgment of the District Court in accordance with that opinion was affirmed by this Court *per curiam* without opinion, 347 U. S. 901 (1954) (see mandate at R. 53-55).

The state court decisions to which the opinion of the District Court refers (R. 67) were an unreported decree of the Circuit Court of Montgomery County, Alabama (R. 44) and the opinion of the Supreme Court of Alabama (R. 57-62) reported at 262 Ala. 285, 78 S. 2d 646 (1955).

JURISDICTION.

The judgment of the United States District Court (R. 68-69) was entered February 17, 1956. Notice of Appeal (R. 69-70) was filed March 21, 1956, and time for docketing the case was enlarged by orders of the District Court entered May 18, 1956 and August 17, 1956, on file with the Clerk of this Court. The appeal was timely filed September 14, 1956 and probable jurisdiction was noted November 13, 1956. The jurisdiction of this Court rests on 28 U. S. C. § 1253.

STATUTE INVOLVED.

The Solomon Act (Acts of Alabama [1953] p. 974) provides as follows:

> SECTION 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.
>
> SECTION 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights,

benefits, or privileges which he enjoys as a result of his public employment.

SECTION 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

SECTION 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

SECTION 5. The provisions of this act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

SECTION 6. All laws or parts of laws which conflict with this act are repealed.

SECTION 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

QUESTIONS PRESENTED.

1. Can a state, consistently with the Fourteenth Amendment, exclude a government employee, working as a clerk in a state-operated liquor store, from further public employment solely because of membership or participation in a labor union?

2. Can a state, consistently with the Fourteenth Amendment, establish as a condition of continued employment by the state, resignation from membership in a labor organization because that organization has, as one of its ultimate purposes, the improvement of wages through collective bargaining when, but only when, such bargaining is permitted by the state?

3. Can a state, consistently with the Fourteenth Amendment, prohibit state employees of a retail liquor store from exercising their rights of voluntary association, mutual assembly, consultation, discussion and free speech because those rights are exercised through membership or participation in a voluntary association which also has, as one of its purposes, collective bargaining if legitimate, with one or more employers?

4. If a state can constitutionally prohibit its employees from joining any labor union, can it, consistently with the Fourteenth Amendment, limit such prohibition to employees who are neither teachers, nor employed by those agencies of the state in which the employees are already fully organized into labor unions, nor employed by cities or counties?

5. Does the Solomon Act violate the Fourteenth Amendment on its face and as applied to plaintiffs and to the members of plaintiff Government and Civic Employees Organizing Committee, CIO (hereinafter called "plaintiff union")?

STATEMENT.

Plaintiff Habshey is a clerk in a retail liquor store operated by the Alabama Alcoholic Beverage Control Board, hereinafter called ABC Board (R. 4, 34), and is a member of plaintiff Union (R. 71). Under the terms of the Solomon Act his mere continued membership in plaintiff Union, without more, causes the forfeiture of all his employment rights and benefits, although he has no other means of livelihood (R. 12).

Plaintiff Union* is a labor organization originally es-

* In July, 1956, in consequence of the merger of the American Federation of Labor and the Congress of Industrial Organizations.

tablished by the Congress of Industrial Organizations (Complainant's Ex. 1 of Pl. Ex. 1; R. 101, 93)** and having the following objects (Complainant's Ex. 1; R. 104, 93):

> "*First.* To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an International Union of the CIO.
>
> "*Second.* To increase the wages and to improve the conditions of employment of our members by legislation, negotiation or other legitimate means.
>
> "*Third.* To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.
>
> "*Fourth.* To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.
>
> "*Fifth.* To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand those benefits.
>
> "*Sixth.* To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life."

---

plaintiff Union took action to merge with its AFL-affiliated counterpart into the American Federation of State, County and Municipal Employees, affiliated with the American Federation of Labor and Congress of Industrial Organizations. Under the merger agreement every member of plaintiff Union, including plaintiff Habshey, automatically continues as a member of the merged union and all the provisions of plaintiff Union's Rules relevant to this cause remain applicable to such members.

** Since the transcript of the state court proceedings was incorporated by stipulation (R. 71) into the record before the United States District Court as Plaintiff's Exhibit 1, the record references in this brief will cite the page number at which the exhibit was offered in evidence before the state court. In each case the admission into evidence before the United States District Court was accomplished by the aforesaid stipulation.

When, prior to the passage of the Solomon Act, plaintiff Union had asked the predecessors of defendants (members and supervisory agents of the ABC Board) to negotiate regarding ABC Board employees, defendant's predecessors had stated that such bargaining could not be engaged in under Alabama law (R. 13, 88-89). Plaintiff Union acceded to such refusal and thereafter asserted neither a right to bargain collectively nor a right to strike (R. 89). Instead, plaintiff Union sought to assist its members in individual employment problems and to consult with its members privately and in Union meetings as to common problems involving working conditions and as to public affairs, economic and political issues, state and federal political candidates, rights under federal legislation (such as the Social Security Act) and the possibility of extending such rights to members and others, matters of federal and state taxation, eligibility for the right of franchise under state and federal laws, and pending legislation, including a proposed bill to provide for collective bargaining for state employees (R. 12-13, 89-91). As part of such assistance in connection with individual employment problems, a Union representative appeared before the Alabama Personnel Board with employees to help settle grievances which had arisen (R. 90).

Promptly after the Solomon Act was passed, defendant's predecessors caused copies of the bill to be sent to all ABC Board store managers with a letter directing that each employee be caused to read the Act carefully, and sign a copy to indicate such reading, and further directing that a copy of the Act be placed on the bulletin board in each store (Complainant's Ex. 3; R. 143, 135). Plaintiff Habshey and all other ABC Board employees were required so to read and initial the copy of the Act (R. 71). In addition, the administrator of the ABC Board wrote plaintiff Union, in answer to a telegraphic request for infor-

mation, advising "that the Solomon Bill will be enforced by the Board in the same manner as the ABC Act or other pertinent laws" (Pl. Ex. C to Complaint; R. 15, 91, 129). Immediately thereafter practically all employees of the ABC Board who had belonged to plaintiff Union (numbering approximately 250; R. 88, 92, 95) withdrew their Union membership (R. 71). The membership "just practically evaporated" (R. 92), dropping to one or two members in all (R. 100). Plaintiff Habshey remained a member because of his belief that he was as much entitled to belong to such an organization as he was entitled to belong to his church (R. 71). No specific policies or enforcement measures were adopted by the ABC Board relating to the Solomon Act other than the action mentioned in this paragraph (R. 129, 137).

Plaintiffs filed suit in the United States District Court for the Northern District of Alabama, Southern Division, October 7, 1953, seeking an injunction against enforcement of the Solomon Act. Temporary relief was denied on the oral assurance of defendants in open court that the Act would not be applied to forfeit any of plaintiff Habshey's employment or other rights pending the court's final decision (R. 36). After hearing, the three-judge District Court, in its first opinion, 116 F. Supp. 354, 359 (N. D. Ala., 1953) (R. 42) and its judgment order of November 9, 1953 (R. 49), which was affirmed by this Court, 347 U. S. 901 (1954) (R. 53), withheld the exercise of jurisdiction because no authoritative construction of the Act had been made by the Alabama state courts, but retained the cause "for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available." In order to obtain such authoritative construction of the Act as suggested by the three-judge court, plaintiff Union filed an equity action on February 19, 1954 in the Circuit Court of Montgomery County, Alabama, praying

for an injunction against the enforcement of the Solomon Act against plaintiff Union or its members and further praying for a declaratory judgment determining that plaintiff Union was not a "labor union or labor organization" within the Solomon Act and that the Act had no application to plaintiff Union or its members. The record before the Circuit Court was the identical record which was subsequently incorporated by reference as the record in this case (R. 71).

On April 12, 1954 the Circuit Court of Montgomery County, Alabama, denied plaintiff Union's prayer for injunctive relief, declaring (R. 144):

> "Said Statute of Alabama [Solomon Act] applies to complainant [Union], its activities and its members all as described in the complaint."

On appeal, the Alabama Supreme Court affirmed the Circuit Court decree March 10, 1955 (R. 57-62), on the ground that the Union was a "labor union" subject to the Solomon Act, irrespective of its actions, because one of its governing objects remained the improvement of working conditions "by legislation, negotiation or other legitimate means."

On February 15, 1956, the instant case was resubmitted to the three-judge District Court for final decree. On February 17, 1956, the three-judge Court entered the judgment here appealed from, ruling "that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional" and dismissing plaintiffs' action with prejudice (R. 68). This appeal followed.

SUMMARY OF ARGUMENT.

I. It is undisputed in the record that plaintiff Union is neither engaging in, nor claiming the right to engage in, collective bargaining with the State of Alabama or the Alabama ABC Board. It is equally undisputed that plaintiff Union's objects include the increasing of wages and improvement of employment conditions for its members "by legislation, negotiation or other legitimate means." Since collective bargaining was not a "legitimate means" as to public employees under Alabama law, plaintiff Union did not act on its belief in the principles of collective bargaining; its only activities on behalf of its members who were employees of the ABC Board were to assist such members in individual employment problems (including the presentation of grievances before the Personnel Board of Alabama) and to meet and consult with them as to economic and political issues and public and private affairs (including discussion of a proposed bill to permit collective bargaining as to state employees). Nevertheless the Alabama Supreme Court specifically held the Solomon Act to apply to plaintiff Union so that, under the terms of that Act:

> "Any public employee [such as plaintiff Habshey] who joins or participates in [Government and Civic Employees Organizing Committee, C. I. O.] or who remains a member of or who continues to participate in [Government and Civic Employees Organizing Committee, C. I. O.] shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment."

Such authoritative application of the Solomon Act by the Alabama Supreme Court, on the identical record which

is now before this Court, effectively outlaws mere membership in plaintiff Union for public employees like plaintiff Habshey, a clerk in a state-owned retail liquor store, on penalty of loss of all employment rights. It is such application and holding that must meet the standards of the Fourteenth Amendment, and defendants cannot sidestep this Court's review of the constitutional issues by claiming that the Alabama Supreme Court either said or meant something other than its actions conclusively determine.

II. As applied by the Alabama Supreme Court to plaintiffs, the Solomon Act violates the due process clause of the Fourteenth Amendment. The Act restricts the exercise of the constitutional rights to freedom of speech, assembly and petition; it establishes a criterion for public employment (non-membership in a labor union) which, having no relationship to the employee's suitability for public employment, is patently arbitrary and discriminatory. Such a criterion cannot withstand the principles stated by this Court in *Slochower,* 350 U. S. 551 (1956), *Wieman,* 344 U. S. 183 (1952), *Adler,* 342 U. S. 485 (1952), and *Garner,* 341 U. S. 716 (1951).

This Court is not confronted in this case with the question whether a state may prohibit unionization among policemen or firemen, nor with the question whether a state may bar a union which insists on a right to collective bargaining as the means for fixing the terms and conditions of public employment. Indeed, plaintiff Union's activity in assisting its members in the processing of grievances, upon which the Alabama Supreme Court seized as support for its opinion, is not only the obverse of the collective bargaining process, but for the state to prohibit such assistance might itself create a due process problem by the denial of an effective hearing to such members.

III. The exclusions made by the Solomon Act, except-

ing from its application teachers, employees of the State Docks Board, and city or county employees, are wholly arbitrary and unreasonable. Such exclusions reinforce the constitutional infirmities of the statute under the due process clause of the Fourteenth Amendment and, moreover, violate the equal protection clause of that Amendment. No rationalization has ever been offered, either by defendants or by the state courts, of any claimed "evil" which would purport to justify the restrictions made by the Act on basic constitutional rights; but whatever such "evil" implicit in mere union membership may be, it defies explanation to find that evil present as to plaintiff Habshey, a retail liquor salesman, but absent as to teachers, or city employees (such as policemen and firemen), or county employees, or State Docks Board employees.

ARGUMENT.

I. THE SOLOMON ACT HAS BEEN CONCLUSIVELY CONSTRUED BY THE ALABAMA SUPREME COURT TO APPLY TO PLAINTIFF UNION AND ITS MEMBERS; IT IS THE CONSTITUTIONALITY OF THAT APPLICATION WHICH IS BEFORE THIS COURT.

At the time this case was last before this Court (347 U. S. 901 (1954)), troublesome questions were presented for determination preliminary to the constitutional issues. The three-judge District Court had been of the view that the Solomon Act could be construed by the state courts to meet the challenge of unconstitutionality. Accordingly, it had refused injunctive relief but had retained jurisdiction. This Court affirmed.

Plaintiff Union then instituted an action in the state courts for injunctive and declaratory relief so that, as provided in the District Court decree, an authoritative construction of the Act, as applied to plaintiff Union, could be obtained. The Alabama Supreme Court has now construed the Act as applicable to any organization which has, as one of its ultimate objectives, the achievement of a collective bargaining relationship with any employer—even though the organization abides by existing law forbidding such bargaining with the state and contents itself, as did plaintiff Union, with other activities of a "legitimate" nature so long as collective bargaining with the state remained forbidden. Now the question is squarely presented as to whether a state may constitutionally prohibit its employees from joining or remaining members of an organization such as plaintiff Union.

Under the record on which the Alabama Supreme Court held the Solomon Act applicable to plaintiff Union, the

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identical record which by stipulation comprises the record evidence on appeal before this Court (R. 71), the following facts are plain and uncontradicted:

1. Plaintiff Union is an organization having as one of its purposes (R. 104):

"Second: To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means."

2. When defendants denied that plaintiff Union had the right to negotiate with defendants as to Alcohol Beverage Control employees, plaintiff Union acceded to such denial (R. 89) and thereafter sought only to assist its members in individual employment problems and to meet and consult with them as to economic and political issues and public and private affairs (R. 12-13, 89-91). As the Alabama Supreme Court pointed out, part of plaintiff Union's activity after defendants' refusal to bargain collectively was reflected in the following testimony by Battles, the Union representative (R. 90):

"A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

3. Plaintiff Union has been held a "labor organization" within the terms of the Solomon Act.

It is perhaps a truism to say that this Court reviews judgments, not statements in opinions; holdings, not talk.

Black v. *Cutter Laboratories*, 351 U. S. 292, 297 (1956).

Where, as here, federal constitutional rights are asserted, this Court is bound by the construction of a state statute by the Supreme Court of that state; but it is this Court's duty to determine for itself whether the effect and operation of the statute, as so construed, deprives the plaintiffs of those constitutional rights. The decision of the state Court as to applicability of the Act is final; the reasoning

of the state Court—and its characterization of the undisputed facts in the record—are not.

Kern-Limerick, Inc. v. *Scurlock*, 347 U. S. 110, 121 (1954).
Niemotko v. *Maryland*, 340 U. S. 268, 271 (1951).
Oyama v. *California*, 332 U. S. 633, 636 (1948).
Richfield Oil Corp. v. *State Board of Equalization*, 329 U. S. 69, 84 (1946).
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Corn Products Refining Co. v. *Eddy*, 249 U. S. 427, 432 (1919).
St. Louis S. W. Ry. Co. v. *Arkansas*, 235 U. S. 350, 362 (1914).

Thus it is a binding construction of the Solomon Act that plaintiff Union, with its purposes and activities limited as stated in paragraphs numbered 1 and 2 above, is nevertheless a "labor organization" under that Act. The action of the Alabama Supreme Court—its judgment—was to affirm (R. 62) a decree that declared (R. 144):

> "Said Statute of Alabama applies to complainant [Union], its activities and its members all as described in the complaint."

But neither the state court nor defendants can escape the unconstitutionality of that determination by characterizing the Union's processing of grievances before the Personnel Board as going beyond the scope of a "mere discussion group" (R. 62), or by characterizing the undisputed abandonment of all efforts to bargain collectively or to negotiate with the ABC Board as "in irreconcilable conflict with the declared purpose and object of the organization and of the Committee" (R. 61). This Court is the final arbiter of whether a state has the power to prohibit mere membership in plaintiff Union because, and only because, its statement of objects includes "negotiation or other legitimate means" as methods for securing increased wages and im-

proved conditions of employment. It is this attempted outlawry whose validity is now squarely in issue, for there is no question that union membership alone is the disqualifying criterion:

> "We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee [plaintiff Union] and the constitution of the Organization [CIO]. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided. We do not understand appellant to contend to the contrary." *Government and Civic Employees Organizing Committee* v. *Windsor*, 262 Ala. 285, 288, 78 S. 2d 646, 649 (1955).

The District Court, in its first decision, concluded that the settlement of wages and other conditions of employment for state employees was a proper subject for state legislative or executive action and not for collective bargaining; that the state could constitutionally, therefore, prohibit its employees from being members of an organization for the purpose of engaging in collective bargaining; and that the question of whether the Solomon Act was so limited should be decided by the state courts.

The state courts have now decided that the statute is not so limited. Whether or not a union presently insists on collective bargaining with the State, and whether or not it accepts the denial of such bargaining under present law and limits itself to lawful activities and efforts to change the law, the state courts have declared that it falls within the statutory ban if one of its ultimate purposes, as expressed in its governing Rules, is to achieve collective bargaining with one or more employers, even—as here—by "legitimate means". And once the union falls within the fatal area, membership alone in that union makes the pen-

alties and forfeitures operative. In short, the Alabama Supreme Court has given the Act a wholly literal reading.

II. THE SOLOMON ACT, AS APPLIED TO PLAINTIFF UNION AND ITS MEMBERS, VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

This case confronts this Court with a new kind of attempt by a state to impose conditions on public employment which cut across constitutional rights of the employees involved. Heretofore this Court has resolved conflicts between claimed state interests and individual rights in such cases as:

Slochower v. *Board of Higher Education*, 350 U. S. 551 (1956).

Wieman v. *Updegraff*, 344 U. S. 183 (1952).

Adler v. *Board of Education*, 342 U. S. 485 (1952).

Garner v. *Board of Education*, 341 U. S. 716 (1951).

Here, however, for the first time the condition sought to be imposed by the state is directed solely against membership in a labor union; mere membership, without more, causes the absolute forfeiture of the employment rights of the government employee if one of the union's ultimate objects is collective bargaining with any employer.

To enforce the Solomon Act, as so construed, and to uphold the patently arbitrary condition it imposes on public employment, would be to run counter to the requirements of due process as made clear in *Wieman* v. *Updegraff*, 344 U. S. 183, 191-92 (1952):

> "For in United Public Workers, though we held that the Federal Government through the Hatch Act could properly bar its employees from certain types of political activity thought inimical to the interests of the Civil Service, we cast this holding into perspective by emphasizing that Congress could not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal

employee shall attend Mass, or take any active part in missionary work.' 330 U. S. at 100. See also *In Re Summers*, 325 U. S. 561, 571 (1945). We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

Even in dealing with the sensitive questions of loyalty, a state must of course conform to the requirements of due process. As this Court stated at its last term in *Slochower* v. *Board of Higher Education*, 350 U. S. 551, 555 (1956):

> "The problem of balancing the State's interest in the loyalty of those in its service with the traditional safeguards of individual rights is a continuing one. To state that a person does not have a constitutional right to government employment is only to say that he must comply with reasonable, lawful and nondiscriminatory terms laid down by the proper authorities."

Here no problem of protecting the state against disloyalty of a public servant exists. Rather, the activities which the State of Alabama is seeking to restrict are themselves constitutionally protected:

> "Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of the workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." *Thomas* v. *Collins*, 323 U. S. 516, 539 (1945).

By infringing those rights the State of Alabama has violated the Fourteenth Amendment.

The arbitrariness of the statutory classification estab-

lished by the Solomon Act is manifest. No relationship between simple membership in a labor union and unsuitableness for public employment has been, or constitutionally could be, established. No attempt has been made to restrict only activities reasonably found by the legislature to have a potential for evil:

> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive." *Slochower* v. *Board of Higher Education*, 350 U. S. 551, 558 (1956).

Unable to meet the constitutional merits on this ground, defendants attempt to sidestep the constitutional infirmity by making this case what it is not.

Thus, this Court is not here concerned with the question whether a state can legally prohibit unionization among policemen or firemen. In the several state court cases which have dealt with that problem, the special, semi-military problems of discipline have controlled the judicial decisions:

> "The police and fire departments are in a class apart. Both are at times charged with the preservation of the public order, and for manifold reasons they owe to the public their undivided allegiance. The power in the state of complete control is imperatively necessary if discipline is to be maintained." *Carter* v. *Thompson*, 164 Va. 312, 180 S. E. 410, 412.

Plaintiff Habshey is a liquor salesman employed in a state operated retail liquor store—scarcely a member of a "class apart." Indeed, the remarkable recognition which the Solomon Act gives to the status of policemen and firemen as a "class apart" is to *exempt* them (as city employees) from its prohibitions on union membership (Section 3; R. 9).

Nor is this Court here concerned with the question whether a state can legitimately bar a union which is in-

sisting on its right to collective bargaining as the means for fixing the terms and conditions of public employment (as in *Miami Water Works Local 654* v. *City of Miami*, 157 Fla. 445, 26 S. 2d 194 (1946)). Perhaps nothing illustrates the arbitrary character of the Solomon Act in its application to plaintiff Union quite as well as Battles' testimony on which the Alabama Supreme Court and defendants' Motion to Dismiss or Affirm before this Court seized, as to "settl[ing] quite a few grievances which they [the employees] had."

For the processing of grievances is the obverse of collective bargaining—the individual settlement of individual employee problems within the framework of a fixed employment relationship, as contrasted with the establishment of the terms and conditions of the employment relationship itself for an entire employee group. This basic distinction has been recognized by Congress in the National Labor Relations Act (29 U. S. C. § 159 (a)):

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; *Provided*, that any individual employee or a group of employees shall have the right at any time to present grievances to the employer and have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment,"

and by such decisions as *Mugford* v. *Mayor and City Council of Baltimore*, 185 Md. 266, 44 Atl. 2d 745, 747 (1945), where after holding that a union could not insist on col-

lective bargaining to fix the terms and conditions of public employment, the court said:

> "But it by no means follows that employees may not designate a representative or spokesman to present grievances.
>
> "It has been frequently held that a municipality, in performing work or other duties it is required by law to do, cannot discriminate in favor of members of a labor union. Such action would not only be unlawful but would also tend to constitute a monopoly of public service by members of a labor union, which the law does not countenance. By the same force of reasoning, a citizen who is a member of a union cannot, by that fact alone, be barred from a position in the public service (citing authorities)."

Accord:

City of Springfield v. *Clouse*, 356 Mo. 1239, 206 S. W. 2d 539, 542 (1947).

City of Los Angeles v. *Los Angeles Building & Construction Trades Council*, 94 Cal. App. 2d 36, 210 P. 2d 305, 313 (1949).

Thus even if it were assumed that public employees could be barred from membership in a union which engaged in collective bargaining efforts to vary terms and conditions of employment fixed by statute, such bar could not extend to members of a union which accepted the statutory terms without attempting to bargain collectively, but advised and assisted the members in presenting their individual problems within the statutory framework. Activity of the latter nature constitutes exercise of First Amendment rights of the same generic character as those protected by this Court in *Thomas* v. *Collins*, 323 U. S. 516, 539 (1945).

Indeed, to prohibit to an employee the right of assistance of his choice in the presentation and disposition of his individual employment problems at a Personnel Board hearing in itself presents another aspect of the due proc-

ess problem. Compare this Court's statement in *Powell* v. *Alabama*, 287 U. S. 45, 69 (1932), most recently quoted in *Chandler* v. *Fretag*, 348 U. S. 3, 10 (1954):

> "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

When the state's representatives advised plaintiff Union that collective bargaining—meaning the collective negotiation of the terms and conditions of the basic employment relationship—was not "legitimate", plaintiff Union complied with its basic statement of purpose and refrained from such negotiation. But when plaintiff Union, as an association of individuals, acts to aid and counsel those individuals in the hearings on their individual problems and grievances at their request, denial of that right is a deprivation of due process.

Rather than the nonexistent case that defendants ask this Court to affirm, this Court is here called upon to decide the case properly before it: Whether the Constitution permits a state to bar union membership to its employees because the union believes in collective bargaining, where legitimate, as one of its ultimate objectives and because the union has aided its members in the disposition of their individual grievances. The constitutional choice is between *C. I. O.* v. *Dallas*, 198 S. W. 2d 143 (Tex. Civ. App.) (the only case upholding such a bar as to all public employees), on the one hand, and this Court's own decisions in:

Slochower v. *Board of Higher Education*, 350 U. S. 551 (1956).

Wieman v. *Updegraff*, 344 U. S. 183 (1952).

Adler v. *Board of Education*, 342 U. S. 485 (1952).

on the other hand. Only one resolution of that choice is possible.

III. THE SOLOMON ACT AND THE EXCLUSIONS THEREFROM VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

In addition to the constitutional infirmity of the Solomon Act itself, the very exclusions made by that act further violate the Fourteenth Amendment by their arbitrary character. In *Adler* v. *Board of Education*, 342 U. S. 485, 493 (1952), this Court said, in upholding a state statute limited to the field of education:

> "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this the state has a vital concern."

Yet the Alabama legislature has made the Solomon Act provisions specifically inapplicable to teachers (Section 3; R. 9). Whatever the unarticulated and unknown "evil" of union membership may be, it apparently does not extend to the teacher who "works in a sensitive area in a schoolroom." Nor does the Act apply to employees of cities or counties, thus presenting the anomaly of placing Alabama policemen and firemen in a "class apart," not by imposing more stringent controls on them in the interest of public safety but by actually excluding them from the restrictions of the Act. Nor, finally, does the Act apply to employees of the State Docks Board (in which latter agency unions affiliated with the railroad brotherhoods had already organized the employees and negotiated wage schedules and working conditions when the Act was passed; R. 14, 35). In sum, the limitations imposed on the Act

by the legislature violate the equal protection clause of the Fourteenth Amendment just as the basic classification made by the Act denies both equal protection and due process.

This is not to say, of course, that the state must cure an entire evil in all its possible applications at one time. But where the question is whether the evil exists at all—whether the statutory standard is a "reasonable, lawful and nondiscriminatory term" (*Slochower* v. *Board of Higher Education*, 350 U. S. 551, 555 (1956)) to impose on government employment—the exceptions made by that statute become relevant. We resubmit that whatever the "evil" of Union membership may be upon which the Solomon Act is grounded (or even whatever the "evil" of collective bargaining as to public employees might be), there can be no rational explanation as to why that "evil" does not pervade the unionization of (or collective bargaining for) teachers, or city employees (including policemen and firemen), or county employees, or State Docks Board employees. The Alabama legislature has not "excluded from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation," which this Court found sufficient justification for the classification in *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 472 (1945), relied on by defendants. Instead, the arbitrary and specific exceptions to the general statutory rule constitute the same type of "invidious discrimination" which this Court has held to violate the equal protection clause in such cases as:

Wheeling Steel Corp. v. *Glander*, 337 U. S. 562, 572 (1949).

Hillsborough Township v. *Cromwell*, 326 U. S. 620, 623 (1946).

Skinner v. *Oklahoma*, 316 U. S. 525, 541-42 (1942).

Smith v. *Cahoon*, 283 U. S. 553, 566-67 (1931).

IV. SUMMARY.

In recent terms this Court has often been called upon to mark out the area of constitutional protection of government employees. Here a state legislature has sought to erode that area by prohibiting state employment to every member of a labor union, and the state courts have defined "labor unions" to include any organization one of whose ultimate purposes is the achievement of collective bargaining, even though the organization proposes only to use lawful means to that end, accepts existing restrictions against such bargaining with the state, and confines its activities to other areas of employee interest and advancement where collective bargaining is forbidden.

We think it clear that a state could not, consistently with the Constitution of the United States, forbid its employees from believing in the principle of collective bargaining. We think it equally clear that a state cannot constitutionally prohibit its employees, upon pain of dismissal, from joining an organization because that organization believes in collective bargaining. Yet such a belief, shared by plaintiff Union and its members, has been held fatal by the state court even though on the record that belief is not being, and is not intended to be, translated into action.

We submit that this untenable doctrine inhibits plaintiffs' constitutional rights for fear of a non-existent "danger" which is neither "clear" nor "present". The District Court failed to recognize that the Solomon Act, as construed by the Alabama state courts, violates the Fourteenth Amendment.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that the judgment of the District Court, dismissing this action with prejudice and with costs, should be reversed and that this case should be remanded with directions to enter a final decree and injunction restraining the enforcement, operation and execution of the Solomon Act in accordance with the prayer of the complaint (R. 7-8).

Respectfully submitted,

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